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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

92 JUN 30 P3:41

in the Matter of)

OHIO EDISON COMPANY)
(Perry Nuclear Power Plant,)
Unit 1))

Docket Nos. 50-346-A
50-440-A

THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY)
THE TOLEDO EDISON COMPANY)
(Perry Nuclear Power Plant,)
Unit 1, and Davis-Besse)
Nuclear Power Station,)
Unit 1))

(Suspension of Antitrust
Conditions)

NRC STAFF'S STATEMENT CONCERNING
MATTERS NOT TO BE CONSIDERED BY THE
LICENSING BOARD AND REQUEST FOR LEAVE TO RESPOND

The Atomic Safety and Licensing Board, pursuant to its Memorandum and Order dated June 12, 1992, has provided the parties with an opportunity to identify any "significant factual assertions" made during the oral argument conducted on June 10, 1992, that should not be considered by the Board in resolving the "bedrock" legal issue, and to explain why such assertions should not be so considered.

The Staff hereby states that it has not identified any "significant factual assertions" raised during the oral argument by any of the parties that the Board should not consider. In addition, however, the Staff requests that in the event any other party identifies what it considers to be such an assertion that should not be considered by the Board, the Staff be allowed to respond to that party's objections within five days of receipt of such


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objections. The opportunity to respond is necessary to ensure that the record is complete as to not only reasons offered why identified matters should not be considered, but also as to reasons why such matters should indeed be considered by the Board in resolving the "bedrock" legal issue. The Staff, of course, cannot provide its views concerning particular matters objected to by another party until the Staff is first apprised of such matters.

In consideration of the above, the Staff's request should be granted.

Respectfully submitted,


Steven R. Horn
Counsel for NRC Staff

Dated at Rockville, Maryland
this 29th day of June, 1992